

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KEYBANK NATIONAL ASSOCIATION,)	
)	
)	
Plaintiff,)	
)	
vs.)	
)	Civil Action No.: 24 Civ. 2609 (KPF)
JE SPE 5399 LLC; TVPX AIRCRAFT)	
SOLUTIONS INC., not in its individual capacity,)	ORDER FOR IMMEDIATE
but solely as Owner Trustee under the 2022 MSN)	POSSESSION AND INJUNCTION
5399 Statutory Trust; and MOSHE SILBER, an)	
individual,)	
)	
Defendants.)	
)	
)	

This matter comes before the Court on the Motion of Plaintiff, KeyBank National Association (“KeyBank” or “Plaintiff”), for an *Ex Parte* Order of Immediate Possession, Replevin, and Injunctive Relief (the “Motion”) filed by the undersigned counsel Thompson Hine LLP. The Court having considered the Verified Complaint (Dkt. No. 1), Declaration of Alberto Sanchez (Dkt. No. 6-1), Declaration of Curtis L. Tuggle, the accompanying memorandum of law in support of the Motion (Dkt. No. 6-7), and all other papers submitted in support thereof; and after due deliberation thereon; and the Court having subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332; and Defendants being subject to personal jurisdiction in this Court pursuant to the express terms of the Loan Documents¹ and Article 43 of the Cape Town Convention; and venue being proper; and the Court being otherwise duly advised on the matter; and the Court having

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in KeyBank’s memorandum in support of the Motion.

authority to issue this Order without a hearing pursuant to Article 13 of the Cape Town Convention Rule 64 of the Federal Rules of Civil Procedure, and other applicable law;

IT IS HEREBY PROVISIONALLY FOUND THAT:

A. JE SPE is in default under the Aircraft Loan Agreement dated December 22, 2022, by and between KeyBank and JE SPE (the “Loan Agreement”), whereby KeyBank extended a term loan in the amount of \$25,000,000.00 to JE SPE for the purpose of financing (i) one Gulfstream Aerospace model GV-SP (G550) aircraft bearing manufacture’s serial number 5399 and U.S. Registration Number N399FF (the “Airframe”); (ii) two (2) Rolls Royce Deutschland Ltd & CO KG BR700-710C4-11 engines bearing manufacturer’s serial numbers 15911 and 15912 (the “Engines”); (iii) and all appliances, parts, instruments, appurtenances, accessories and other equipment or property installed thereon or therein (the foregoing, together with the Airframe and Engines, the “Aircraft”).

B. The Event of Default under the Loan Agreement is an Event of Default under that certain Aircraft Security Agreement dated December 22, 2022, by and between KeyBank, in its capacity as the “Secured Party,” and TVPX, in its capacity as “Grantor” (the “Security Agreement”).

C. The Cape Town Convention (and related protocol), Loan Agreement, Security Agreement, Consent Agreements, other Loan Documents, the Uniform Commercial Code, and New York law entitle KeyBank to repossess and remove the Aircraft and all logs, manuals and data, inspection and maintenance records, other materials required by the FAA, or any other governmental authority having jurisdiction, to be maintained with respect to each item of Equipment, and all other records with respect to the Aircraft (the “Aircraft Documents”) upon the occurrence of an Event of Default by JE SPE.

D. The Court has authority to issue an order pursuant to the Cape Town Convention, Loan Agreement, Security Agreement, Consent Agreements, other Loan Documents, the Uniform Commercial Code, and New York Law with respect to KeyBank's right to immediate possession of the Aircraft and Aircraft Documents.

E. The Court has authority to issue this Order without a hearing pursuant to Article 13 of the Cape Town Convention and in accordance with Section 5.2 of the Security Agreement and Loan Agreement, which parties have agreed that KeyBank may obtain immediate possession of and remove the Aircraft, "by self-help, summary proceeding, or otherwise" upon the occurrence of an Event of Default "without notice."

F. Pursuant to Section 5.5 of the Loan Agreement and Security Agreement, JE SPE and TVPX have irrevocably appointed KeyBank as their attorney-in-fact, granting KeyBank with such Power of Attorney to, *inter alia*, "take any actions [] or institute any proceedings which [KeyBank] may deem to be necessary or appropriate at any time to protect and preserve the interest of [KeyBank] in the Collateral, or in this [Loan] Agreement, the Security Agreement or the other Loan Documents."

G. JE SPE and TVPX have expressly waived any and all rights to prior notice of KeyBank's efforts to obtain a writ of replevin, order of possession, or other judicial remedy; any and all rights to the imposition of any bond, surety, or other undertaking that may be required by statute, law, regulation, or custom in connection with any order of possession; and any and all rights to contest, hinder or delay KeyBank's possession and disposition of the Aircraft, Aircraft Documents and any other collateral granted to KeyBank under the Security Agreement.

H. Giving notice of this request would prejudice KeyBank's ability to enforce its remedies under both the Cape Town Convention and the Loan Documents, wherein JE SPE and

TVPX granted KeyBank Power of Attorney, waived rights to notice of this proceeding, and waived the requirement of an undertaking.

I. JE SPE and TVPX further waived the requirement under CLPR § 7102(e) for an undertaking pursuant to the terms of (a) Section 5.2 of the Security Agreement with provides that after an Event of Default, KeyBank may obtain immediate possession “by self-help, summary proceedings or otherwise without any liability of any kind whatsoever on the part of the Secured Party for or by reason of such entry or taking of possession except any damage or injury to property or persons caused directly by Lender’s gross negligence or willful misconduct”; (b) Section 5.4 of the Security Agreement and Loan Agreement, whereby JE SPE and TVPX “waive[] any rights, now or hereafter conferred by statute or otherwise, which might limit or modify any of the rights or remedies of the Lender under or in connection with this Article 5...”; and (c) the affirmative waiver on behalf of JE SPE and TVPX by KeyBank through the exercise of its power of attorney, as contemplated by Section 5.5 of both the Loan Agreement and Security Agreement.

Based on the provisional findings, it is hereby adjudged, decreed, and

ORDERED that the Motion is Granted; and it is further

ORDERED that KeyBank is entitled to, and shall have, **IMMEDIATE POSSESSION** of the Aircraft and Aircraft Documents, and JE SPE and TVPX shall (and shall cause their contractors, agents, and employees to) forthwith turn over possession of the Aircraft and Aircraft Documents to KeyBank, or to agents designated by KeyBank, and forthwith take all actions necessary to allow KeyBank to obtain access and possession to the Aircraft and Aircraft Documents, including terminating leases and sub-leases, if any remain, and obtaining the Aircraft and Aircraft Documents from third-party sub-lessees, operators, maintenance managers, or other contractors in possession or control of the Aircraft and/or and Aircraft Documents; and it is further

Aircraft and Aircraft Documents to KeyBank or to agents designated by KeyBank in order for KeyBank to reclaim the same; and it is further

ORDERED that that JE SPE and TVPX and any and all persons/entities who are in active concert or participation with JE SPE and/or TVPX and who receive actual notice of this Order, shall, upon service of this Order in the manner described below, be immediately **ENJOINED AND RESTRAINED** from taking the following actions, alone or in concert with any person or entity: (i) attempting to exercise or exert any control over the Aircraft, Aircraft Documents, and other Collateral of KeyBank; (ii) preventing KeyBank from taking any action necessary to retake possession of the Aircraft, Aircraft Documents, and other Collateral of KeyBank; and (iii) taking any steps with respect to the registration or airworthiness of the Aircraft except as agreed to by KeyBank; and it is further

ORDERED that JE SPE and TVPX shall immediately **TURNOVER** to KeyBank all Aircraft Documents, including those necessary for it to obtain a Certificate of Airworthiness, and other Collateral of KeyBank; and it is further

ORDERED that that a copy of this Order, together with copies of the papers upon which it has been granted, shall be served upon Defendants by personal delivery or overnight courier, under the terms of the Loan Documents, to the following: as to JE SPE, to its chief executive office located at 46 Main St. Suite 339, Monsey, NY 10952; as to TVPX, to its chief executive office located at 39 E. Eagle Ridge Dr. Suite 201, North Salt Lake, UT 84054; and as to Silber, to his residence at 25 Hidden Valley Drive, Suffern, NY 10901 so as to be received by Defendants no later than **April 11, 2024, at 5:00 p.m. ET** and that such service shall be deemed good and sufficient; and it is further

any right for an undertaking; and it is further

ORDERED that within five days after KeyBank has obtained actual possession of the Aircraft and Aircraft Documents, KeyBank shall move for an Order confirming this Order of Possession on five (5) days' notice to the Defendants, unless extended by further order from this Court and that, upon confirmation, KeyBank shall be entitled to exercise all remedies under the Loan Documents and applicable law, including the Uniform Commercial Code, against the property seized.

Dated: April 8, 2024
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

SUBMITTED BY:

Curtis L. Tuggle
Emily J. Mathieu
Jonathan S. Hawkins
Thompson Hine LLP
300 Madison Avenue, 27th Floor
New York, New York 10017-4611
T: 212-344-5680 / F: 212-344-6101
Curtis.Tuggle@Thompsonhine.com
Emily.Mathieu@Thompsonhine.com
Jonathan.Hawkins@Thompsonhine.com

Counsel for KeyBank National Association